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United States Senate

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON
ADMINISTRATIVE PRACTICE AND PROCEDURE
(SUBORDINATE TO SEC. 3, S. RES. 59, 91ST CONGRESS)
WASHINGTON, D.C. 20510

April 10, 1975

Honorable Edward H. Levi
Attorney General
Department of Justice
Washington, D.C.

RECEIVED

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CRIMINAL DIVISION

Dear Mr. Attorney General:

A newspaper report in today's Washington Post has raised serious questions as to how many federal agencies engage in electronic surveillance and the extent of such surveillance.

At a hearing on May 23, 1974, before the Subcommittee on Administrative Practice and Procedure, Attorney General Saxbe testified on this subject. I asked him: "Can you tell us about any other organizations or government departments that are involved in any wiretapping at all today?" The Attorney General replied: "We do not believe that there is anyone else and the penalties are rather severe." (p. 495) I am enclosing a copy of the hearings for your convenience.

The recent reports raise questions concerning the completeness and clarity of Attorney General Saxbe's earlier testimony. President Johnson's executive memorandum of June 30, 1965, requires that federal agencies engage in wiretapping only with the prior approval of the Attorney General. In order to fully answer the questions that have been raised, I request that you provide the Subcommittee on Administrative Practice and Procedure with the following information by April 16:

1. A list of all federal departments, agencies, bureaus, divisions, and other units that conduct, have conducted, or have authority to conduct electronic surveillance of any type (including wiretaps, bugs, and other uses of any device or apparatus which can be used to intercept a wire or oral communication).

Honorable Edward H. Levi

April 10, 1975

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Page 2

2. For each agency listed under #1 above, the specific statutory or other authority for the agency's conduct of electronic surveillance.

3. For each agency listed under #1 above, all guidelines, procedures, rules and regulations relating to the conduct of electronic surveillance.

4. For each agency listed under #1 above, a specification of whether the agency's conduct, or authority to conduct, electronic surveillance includes:

a. Electronic surveillance conducted pursuant to a court warrant obtained under the provisions of sections 2516 and 2518 of title 18, United States Code;

b. Electronic surveillance conducted without a court order obtained under the provisions of sections 2516 and 2518 of title 18, United States Code;

c. Electronic surveillance conducted within the United States;

d. Electronic surveillance conducted in foreign countries.

5. For each agency listed under #1 above, the number of electronic surveillances in place on April 1, 1975, and the number of electronic surveillances in place at any time during the calendar years 1970 through 1974 (with a description of the method used in computing these figures).

I am sure you appreciate the need for the questions raised by Attorney General Saxbe's testimony to be answered as quickly and definitively as possible. These questions demonstrate once again the need for close cooperation between the Department of Justice and the Congress.

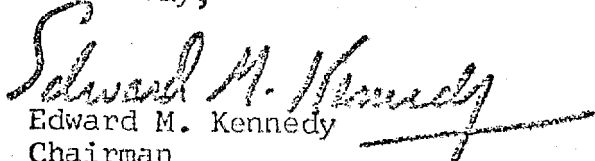
Many of the questions posed in this letter were originally raised in my letter of October 10, 1973, to Attorney General Richardson. The Subcommittee requested additional information on April 16, 1974, and at the hearing on May 23, 1974. Attorney General Saxbe indicated a willingness at the hearing to provide this information in the near future, but none of this information has been provided. I am enclosing copies of the October 10, 1973, and April 16, 1974 correspondence

Honorable Edward H. Levi
April 10, 1975
Page 3

for your convenience, and would appreciate your letting me know by when the information requested in these letters and at the hearing will be made available.

With best wishes.

Sincerely,


Edward M. Kennedy
Chairman
Subcommittee on Administrative
Practice and Procedure

517

We look forward to hearing from you and to making the necessary arrangements for your appearance.

With best personal regards.

Sincerely,

EDWARD M. KENNEDY,
Chairman, Subcommittee on Administrative Practice and Procedure.
SAM J. ERVIN, JR.,
Chairman, Subcommittee on Constitutional Rights.
EDMUND S. MUSKIE,
Chairman, Subcommittee on Surveillance.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE,
Washington, D.C., April 16, 1974.

Hon. JOHN DAVITT,
Chief, Internal Security Section, Criminal Division, Department of Justice,
Washington, D.C.

DEAR MR. DAVITT: I appreciate your meeting with me to discuss the nature of the requests by the Subcommittee on Administrative Practice and Procedure for materials relating to warrantless electronic surveillances. The purpose of this letter, as you requested, is to memorialize the Subcommittee's specific requests.

The materials requested are listed in the attached memorandum. Of course, these requests are not intended to be exclusive or exhaustive, and are in addition to any other requests that may be made by the Subcommittee.

I appreciate your cooperation in seeking to ensure that these requests be met promptly. If all the materials requested are not readily available, I would appreciate the Department's providing the materials in increments as they are assembled.

I will look forward to working with you on these and related matters. With best regards.

Sincerely,

KENNETH M. KAUFMAN,
Assistant Counsel.

MATERIALS ON WARRANTLESS ELECTRONIC SURVEILLANCE REQUESTED BY THE
SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE

1. For a representative group of electronic surveillances, please provide the materials listed under either "A" or "B" below. By "representative" is meant a group that is representative with respect to (a) the statutory categories of Section 2511(3), Title 18, United States Code, used by the Attorney General in authorizing the surveillances; (b) the types of targets of the surveillances; (c) the type of surveillance, e.g., telephone, microphone or other; and (d) the date of authorization of the surveillances, both before and after the Supreme Court decision in *United States v. United States District Court*, 407 U.S. 297 (1972).

A. Copies of documents containing: (1) requests for authorization of electronic surveillances from the Director of the FBI to the Attorney General; (2) authorizations signed by the Attorney General; (3) requests for reauthorization of existing electronic surveillances from the Director of the FBI to the Attorney General; (4) reauthorizations signed by the Attorney General; and (5) communications between the FBI or the Department of Justice and a telephone company regarding the installation, maintenance, or discontinuance of electronic surveillances. These documents would be for actual, as opposed to hypothetical, surveillances, but not necessarily surveillances which are currently active. Names and other data which identify targets of the surveillances could be excised. The documents would be given to the Subcommittee staff on a confidential basis, and appropriate measures would be taken to ensure that they remain confidential. They could be shown to appropriate staff of the Subcommittee on Constitutional Rights and the Foreign Relations Subcommittee on Surveillance under the same condition of confidentiality.

B. Copies of the same materials referred to in "A" above except that the documents would represent hypothetical, rather than actual, electronic surveillances. The materials would, however, accurately reflect documents for actual

surveillances. The materials would be supplied to Subcommittee staff on a non-confidential basis, since they would represent hypothetical and not real surveillances. In addition, the Subcommittee staff would be shown copies of some documents for actual surveillances (from which names and identifying data could be removed) in order to compare them with the hypotheticals.

2. Copies of actual or hypothetical documents reflecting each step in the process of review within the FBI of a request to initiate a warrantless electronic surveillance. At the meeting of February 27th, Director Kelley referred to at least a ten-step process within the FBI for reviewing a request for a wiretap. Director Kelley indicated that there are communications to and from the agent in the field, the agent's supervisor, the Assistant Agent in Charge, the Agent in Charge, the supervisor in the appropriate division of the FBI, the Unit Chief, the Section Chief, the Branch Chief, the Assistant Director, the Assistant to the Director, and the Director. To the extent that there may be differences in the review procedure for "bugs" as opposed to wiretaps, please provide documents reflecting these differences.

3. Copies of any FBI or Department of Justice rules, regulations, documents, procedures, manuals or portions of manuals relating in any way to the initiation, installation, conduct, maintenance, supervision, approval, authorization, reauthorization, financing, or discontinuance of warrantless wiretaps or other electronic surveillances.

4. Copies of any documents, rules, regulations, procedures, manuals or portions of manuals relating to record-keeping procedures and indexes in the FBI or the Department of Justice with respect to warrantless electronic surveillances.

U.S. SENATE.

COMMITTEE ON THE JUDICIARY.

SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE.

Washington, D.C., April 17, 1974.

Hon. WILLIAM B. SAXBE,
Office of the Attorney General,
Department of Justice, Washington, D.C.

DEAR MR. ATTORNEY GENERAL: I am writing with reference to my letter to the Attorney General of October 10, 1973, seeking certain information about warrantless electronic surveillance. A copy of this letter is enclosed for your convenience. The information requested would expand and update information supplied to the Subcommittee over the past several years. After six months, none of the information has yet been provided.

In your letter of February 5th, you indicated that every effort was being made to obtain the information I requested as expeditiously as possible. At a meeting with Subcommittee staff last month following our meeting of February 27th, however, the Department stated that it would be willing to provide only an update of the information provided in 1971 and 1972, and to furnish this information only to me personally on a confidential basis. This proposal would not meet the Subcommittee's requirements. The Subcommittee requires all the information requested, not just an update of that supplied two years ago. The information provided on a nonclassified basis in previous years should be provided on the same basis at this time. To the extent that any information is supplied on a confidential basis, Subcommittee members and staff must have access to it.

I am sure you realize that the Subcommittee's need for this information is pressing. As you are aware, we have been conducting hearings on warrantless electronic surveillance with the Subcommittee on Constitutional Rights and the Foreign Relations Subcommittee on Surveillance. In order to effectively exercise our oversight and legislative responsibilities in this area, we need the base of information requested in the letter.

I am writing to request that the bulk of the information requested be provided to the Subcommittee no later than April 29 in order to enable the Subcommittee to analyze the data prior to our next series of hearings beginning May 7th. Please contact Kenneth Kaufman, Assistant Counsel, if you have any questions regarding this request.

Thank you in advance for your cooperation in this matter. With best personal regards,

Sincerely,

EDWARD M. KENNEDY.

Chairman, Subcommittee on Administrative Practice and Procedure.